



**BILLING CODE 7709-02**

**PENSION BENEFIT GUARANTY CORPORATION**

**Approval of Amendment to Special Withdrawal Liability Rules the I.A.M. National Pension Fund National Pension Plan**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of approval.

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**SUMMARY:** The I.A.M. National Pension Fund National Pension Plan (“I.A.M. Fund”) requested the Pension Benefit Guaranty Corporation (“PBGC”) to approve a plan amendment providing for special withdrawal liability rules for certain employers that maintain the I.A.M. Fund. PBGC published a Notice of Pendency of the Request for Approval of the amendment on December 26, 2012 (77 FR 76090) (“Notice of Pendency”). In accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), PBGC is now advising the public that the agency has approved the requested amendment.

**FOR FURTHER INFORMATION CONTACT:** Beth A. Bangert, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; Telephone 202-326-4020 (For TTY/TDD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under § 4201 of ERISA, an employer who completely or partially withdraws from a defined benefit multiemployer pension plan becomes liable for a proportional share of the plan’s unfunded vested benefits. The statute specifies that a “complete withdrawal” occurs whenever

an employer either permanently (1) ceases to have an obligation to contribute to the plan, or (2) ceases all operations covered under the plan. *See* ERISA § 4203(a). Under the second test, therefore, an employer who closes or sells its operations will incur withdrawal liability. Under the first test, an employer who remains in business but who no longer has an obligation to contribute to the plan also is liable. The “partial withdrawal” provisions of §§ 4205 and 4206 impose a lesser measure of liability upon employers who greatly reduce, but do not eliminate, the operations that generate contributions to the plan. The withdrawal liability provisions of ERISA are a critical factor in maintaining the solvency of these pension plans and reducing claims made on the multiemployer plan guaranty fund maintained by PBGC. Without withdrawal liability rules, an employer who participates in an underfunded multiemployer plan would have a powerful economic incentive to reduce expenses by withdrawing from the plan.

Congress nevertheless allowed for the possibility that, in certain industries, the fact that particular employers go out of business (or cease operations in a specific geographic region) might not result in permanent damage to the pension plan’s contribution base. In the construction industry, for example, the work must necessarily take place at the construction site; if that work generates contributions to the pension plan, it does not much matter which employer does the work. Put another way, if a construction employer goes out of business, or stops operations in a geographic area, pension plan contributions will not diminish if a second employer who contributes to the plan fills the void. The plan’s contribution base is damaged, therefore, only if the employer stops contributing to the plan but continues to perform construction work in the jurisdiction of the collective bargaining agreement.

This reasoning led Congress to adopt a special definition of the term “withdrawal” for construction industry plans. Section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, but the employer nevertheless performs previously covered work in the jurisdiction of the collective bargaining agreement anytime within five years after the employer ceased its contributions.<sup>1</sup> There is a parallel rule for partial withdrawals from construction plans. Under § 208(d)(1) of ERISA, “[a]n employer to whom § 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.”

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans that are not in the construction industry may be amended to use special withdrawal liability rules similar to those that apply to construction plans. Under the statute, the regulations “shall permit the use of special withdrawal liability rules . . . only in industries” that PBGC determines share the characteristics of the construction industry. In addition, each plan application must show that the special rule “will not pose a significant risk to the [PBGC] insurance system.” Section 4208(e)(3) of ERISA provides for parallel treatment of partial withdrawal liability rules.

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<sup>1</sup> Section 4203(c)(1) of ERISA applies a similar definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. No plan has ever requested PBGC to determine that it shares the characteristics of an entertainment plan.

The regulation on Extension of Special Withdrawal Liability Rules (29 CFR part 4203), prescribes the procedures a multiemployer plan must follow to request PBGC approval of a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule must be similar to the statutory provision that applies to construction industry plans under § 4203(b) of ERISA. Any special rule for partial withdrawals must be consistent with the construction industry partial withdrawal provisions.

Each request for approval of a plan amendment establishing special withdrawal liability rules must provide PBGC with detailed financial and actuarial data about the plan. In addition, the applicant must provide PBGC with information about the effects of withdrawals on the plan's contribution base. As a practical matter, the plan must show that the characteristics of employment and labor relations in its industry are sufficiently similar to those in the construction industry that use of the construction rule would be appropriate. Relevant factors include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed. PBGC will approve a special withdrawal liability rule only if a review of the record shows that:

(1) The industry has characteristics that would make use of the special construction withdrawal rules appropriate; and

(2) The adoption of the special rule would not adversely affect the plan. After review of the application and all public comments, PBGC may approve the amendment in the form proposed by the plan, approve the application subject to conditions or revisions, or deny the application.

## **Request**

On December 26, 2012, PBGC published a notice soliciting public comment on a request on behalf of the I.A.M. Fund for approval of an amendment prescribing special withdrawal liability rules applicable to employers whose employees work under a contract or subcontract with federal or District of Columbia government agencies that, if approved by PBGC, would be effective for withdrawals occurring after January 1, 2009. PBGC received no comments on the notice.

The I.A.M. Fund is a multiemployer plan located in Washington, D.C. that covers workers with various skill-sets. It is maintained pursuant to collective bargaining agreements (“CBAs”) between contributing employers and the International Association of Machinists and Aerospace Workers. Certain contributing employers employ employees who work under a contract or subcontract with federal or District of Columbia government agencies governed by the Service Contract Act (“SCA”), 41 U.S.C. 351 *et seq.*

Under the I.A.M. Fund’s proposed amendment, complete withdrawal of SCA employers would occur only: (a) under conditions similar to those described in ERISA § 4203(b)(2) for the building and construction industry; (b) upon the employer’s sale or transfer of a substantial portion of its business or assets to another entity who performs such work in the jurisdiction of the collective bargaining agreement but has no obligation to contribute to the I.A.M. Fund; or (c) when the employer ceases to have any obligation to contribute in connection with the withdrawal of every or substantially all employer(s) from the I.A.M. Fund. Partial withdrawal of an employer would occur only under conditions similar to those described in ERISA § 4208(d)(1).

As of January 1, 2010, the I.A.M. Fund had approximately 107,869 active participants and was paying approximately \$445.8 million in benefits to 78,246 pensioners and survivors. For 2010, contributions were \$331.8 million. The number of contributing employers remained stable from 2004-2010. Between 2004 and 2010, the number of active participants increased by almost 69%.

As of September 2012, the I.A.M. Fund had approximately 414 SCA-related CBAs covering 546 sites and 27,105 bargaining unit employees.

### Summary of Actuarial Valuation Results

	2010	2009	2008	2007	2006	2005	2004
<b>Participant Data (as of Jan. 1)</b>							
Participant Counts							
-Active	107,869	104,210	112,842	93,672	68,276	67,181	63,894
- Retired	78,246	76,418	74,534	71,547	70,138	68,261	65,491
- Separated Vested	83,925	81,943	79,092	76,406	72,463	73,193	72,010
-Total	270,040	262,571	266,468	241,625	210,877	208,635	201,395
<b>Contribution Data</b>							
Contribution Base Units	N/A	212,406,557	210,572,334	208,129,349	182,572,827	145,873,219	139,636,859
Contributions Received	\$331,827,659	\$318,412,576	\$297,403,006	\$269,232,994	\$229,965,014	\$186,198,239	\$166,273,860
<b>Fund Disbursement Data</b>							
Benefits Paid	\$445,754,303	\$418,034,866	\$389,758,999	\$363,962,958	\$342,698,440	\$323,603,306	\$302,687,611
Total Disbursements	\$514,294,120	\$482,408,116	\$456,233,117	\$429,698,388	\$401,038,579	\$374,564,146	\$346,893,190
<b>Funding Valuation Results</b>							
Actuarial Accrued Liability(2)	\$10,226,289,591	\$9,518,894,643	\$8,786,060,437	\$8,319,506,519	\$7,177,520,251	\$6,757,777,312	\$6,316,201,092
Actuarial Value of Plan Assets (3),(4)	\$9,348,495,105	\$7,324,683,461	\$8,528,445,344	\$7,562,612,176	\$6,910,936,597	\$6,542,310,777	\$6,291,567,994
Unfunded Actuarial Accrued Liability	\$877,794,486	\$2,194,211,182	\$257,615,093	\$756,894,343	\$266,583,654	\$215,466,535	\$24,633,098
Normal Cost	\$262,972,734	\$247,015,553	\$224,816,950	\$224,796,287	\$175,174,376	\$161,286,365	\$146,360,771

	2010	2009	2008	2007	2006	2005	2004
Ratio of Contributions to Normal Cost Plus Interest on Unfunded Actuarial Accrued Liability	1.01	0.77	1.22	0.96	1.18	1.05	1.12
Funding Valuation Interest Rate	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%
IRC § 432 Plan Status (5)	Neither Endangered nor Critical	Neither Endangered nor Critical	Neither Endangered nor Critical	N/A	N/A	N/A	N/A
Funding Standard Account credit balance (at end of year)	\$1,441,923,418	\$1,287,537,314	\$1,215,638,933	\$1,115,449,739	\$1,100,832,864	\$1,034,280,096	\$997,208,997

### Current Liability Valuation Results

	2010	2009	2008	2007	2006	2005	2004
Current Liability (6)	\$12,890,834,839	\$11,616,776,438	\$11,423,640,776	\$8,852,393,063	\$7,728,528,595	\$6,964,467,902	\$6,178,194,421
Market Value of Plan Assets	\$7,415,989,310	\$6,103,902,884	\$9,143,330,428	\$8,505,670,319	\$7,440,076,874	\$6,917,117,902	\$6,194,918,670
Unfunded Current Liability	\$5,474,845,529	\$5,512,873,554	\$2,280,310,348	\$346,722,744	\$288,451,721	\$47,350,000	\$0
Current Liability Normal Cost (Expected Increase in Current Liability Due to Benefits Accruing During the Plan Year)	\$812,708,299	\$724,602,812	\$722,802,865	\$515,502,172	\$373,709,001	\$332,979,085	\$283,365,005
Ratio of Contributions to Increase In Current Liability Due to Benefit Accruals Plus Interest on Unfunded Current Liability	0.31	0.32	0.34	0.50	0.59	0.55	0.59
Current Liability Interest Rate (7)	4.58%	4.82%	4.33%	5.78%	5.77%	6.10%	6.55%

### Withdrawal Liability Valuation Results

	2010	2009	2008	2007	2006	2005	2004
Total Unfunded Vested Benefit Liability for Withdrawal Liability Purposes (8)	\$0	\$209,374,018	\$0	\$0	\$0	\$0	\$0

(1) Elective January 1, 2011, the rate of future benefit accrual was reduced by 40% (except for participants subject to a custom benefit schedule and those whose employers first joined the fund after April 1, 2003). This change facilitated a zone certification of "Neither Endangered nor Critical" for 2010, which satisfied a key requirement for extending the amortization period for funding standard account charge bases in effect as of January 1, 2009 (under Code § 431(d)).

- (2) The actuarial accrued liability was determined using actuarial assumptions selected by the plan actuary which are deemed to be reasonable (taking into account the experience of the plan and reasonable expectations) and which offer the actuary's best estimate of anticipated experience under the plan. The actuarial accrued liability was determined under the individual entry age normal actuarial cost method.
- (3) The actuarial value of plan assets was based on recognition of the difference between actual investment return and that anticipated under the funding valuation interest rate assumption over a five-year period. The actuarial value is constrained to a 20% corridor around market value.
- (4) The plan elected to implement certain funding relief options allowed under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010. These relief provisions involve i) extending the recognition period for investment losses experienced in 2008 to 29 years; ii) extending the upper constraint on the actuarial value of assets to 130% market value; and iii) modifying the asset valuation method by smoothing the difference between expected and actual return for the year ending December 31, 2008 over a period of 10 years.
- (5) The 2009 plan status of "Neither Endangered nor Critical" is the result of an election by the plan's trustees to freeze the plan status at the 2009 level, as permitted under the Worker, Retiree and Employer Recovery Act of 2008. Without this legislation, the 2009 plan status would have been "Endangered."
- (6) The current liability was determined under actuarial methods and assumptions specified by the Internal Revenue Code and implementing regulations. The unit credit actuarial cost method was used to determine current liability.
- (7) The current liability assumed interest rate is selected from a range based on the four-year weighted average rate on 30-year Treasury bonds as of the valuation date.
- (8) The unfunded vested benefit liability for withdrawal liability purposes was calculated using the unit credit actuarial cost method, the funding valuation interest rate assumption and the funding valuation actuarial value of plan assets.

## **Decision on the Proposed Amendment**

The statute and the implementing regulation state that PBGC must make two factual determinations before it approves a request for an amendment that adopts a special withdrawal liability rule. ERISA § 4203(f); 29 CFR 4203.4(a). First, on the basis of a showing by the plan, PBGC must determine that the amendment will apply to an industry that has characteristics that would make use of the special rules appropriate. Second, PBGC must determine that the plan amendment will not pose a significant risk to the insurance system. PBGC's discussion on each of those issues follows. After review of the record submitted by the I.A.M. Fund, and having received no public comments, PBGC has entered the following determinations.

### **1. What Is the Nature of the Industry?**

In determining whether an industry has the characteristics that would make an amendment to special rules appropriate, an important line of inquiry is the extent to which the I.A.M. Fund's contribution base resembles that found in the construction industry. This threshold question requires consideration of the effect of SCA employer withdrawals on the



I.A.M. Fund's contribution base. As with construction-industry employers, when SCA employers contributing to the I.A.M. Fund lose their contracts, the applicable federal or District of Columbia government agency contracts with a new employer to contribute at the same or substantially the same rate for the same number of contribution base units as the previous SCA employer. This is because the SCA provides that employees must not be paid less than the wages and fringe benefits set by the Department of Labor or as collectively bargained. Over the past ten years, cessation of contributions by any individual SCA employer has not had an adverse impact on the I.A.M. Fund's contribution base. Most SCA employers that have ceased to contribute have been replaced by another employer who begins contributing for the same work.

## **2. What Is the Exposure and Risk of Loss to PBGC and Participants?**

**Exposure.** During the seven year period from 2004 to 2010, the I.A.M. Fund's active participant population increased by 69% while the number of retirees increased by 17%. In those same years, the number of contribution base units grew strongly and the dollar amount of contributions doubled. Benefits paid exceeded contributions in every year, but grew only 47%—a significantly slower than the growth of contributions.

**Risk of loss.** The record shows that the I.A.M. Fund presented a low risk of loss to PBGC guaranty funds. The I.A.M. Fund did not have unfunded vested benefits for withdrawal liability purposes as of December 31, 2009, and did not have to assess withdrawal liability for withdrawals in 2010. The I.A.M. Fund and the covered industry have unique characteristics that suggest that the I.A.M. Fund's contribution base is likely to remain stable. Contributions to the I.A.M. Fund are made with respect to SCA employers whose employees work under a contract or subcontract with federal or District of Columbia government agencies covered under the SCA. Consequently, the I.A.M. Fund's contribution base is secure and the departure of one SCA

employer from the I.A.M. Fund is not likely to have an adverse effect on the contribution base so long as the replacement SCA employer contributes to the I.A.M. Fund for substantially the same number of contribution case units at the same or higher contribution rate as the previous employer.

## **Conclusion**

Based on the facts of this case and the representations and statements made in connection with the request for approval, PBGC has determined that the plan amendment modifying special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the I.A.M. Fund's request for approval of a plan amendment modifying special withdrawal liability rules applicable to SCA employers, as set forth herein. Should the I.A.M. Fund wish to amend these rules at any time, PBGC approval of the amendment will be required.

Issued at Washington, DC, on this 26 day of July, 2013.

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Director  
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